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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,749	08/13/2002	Robert David Darrow	RD27658	8455

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EXAMINER	
LAMPRECHT, JOEL	
ART UNIT	**PAPER NUMBER**
3737	

MAIL DATE	DELIVERY MODE
05/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/064,749	Applicant(s) DARROW ET AL.	
	Examiner Joel M. Lamprecht	Art Unit 3737	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1, 2, 4-17, and 19-32*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because: The arguments filed 3/26/07 have been accepted but are not persuasive. Applicant continues to assert that Dumoulin '635 must move the patient in order to reposition an invasive device in a region of interest. Examiner disagrees. Dumoulin '635 is fully capable of tracking an invasive device through the use of a moveable imaging system and providing feedback in the form of a video message. From the art of record: Automatic placement and alignment of the subject of FIG. 1 within a desired region around the location of invasive device 120 is facilitated by use of a support arm 101. The calculated position of the invasive device from tracking computer 50 (FIG. 2B) is supplied to a positioning means 70, which controls the position and orientation of support arm 101 in relation to support table 110.
The art of record is not specific as to whether the subject or the support arm is required to move. Therefore it is perfectly reasonable to assume that both scenarios are plausible and would be intuitive to one skilled in the art. Furthermore it is reasonable to presume that such positioning of the subject is a preliminary step in the surgical procedure, and that once the patient is positioned in an initial fashion, the automatic positioning and monitoring system of Dumoulin '635 is able to track, with its movable imaging system, the position of said invasive device. Applicant's specification and arguments seem to teach away from each other with respect to the capabilities of the "medical device positioning subsystem or a processor" From Applicants specification:

[0031] In further embodiments, the monitoring subsystem 210 is adapted to compute the recorded three-dimensional (3D) target position in system coordinates, the device coordinates of three tracking coils embedded in the guide, the device coordinates of the needle exit hole, the needle length and travel in device coordinates, and the real-time system coordinates of the three tracking coils in system coordinates. This information is desirably converted to a common coordinate system and combined to compare the 3D position of the target with the 3D position of the guide to offer advice on positioning the guide for a biopsy in further embodiments, medical device monitoring subsystem 210 is responsive to either movement of the subject or movement of the medical device relative to a specified target region of interest within the subject. In one embodiment, the medical device subsystem 210 is adapted to respond to the movement with a predetermined response if the medical device position deviates by a specified distance from the target region of interest. For example, the monitoring subsystem 210 responds to motion of the medical device in pre-programmed fashion such as terminating therapy, acquiring new reference images, activating a device positioning subsystem to assist operator in repositioning device or alternatively activating advisory feedback.

Examiner asserts that feedback, which is as specific as the disclosure of the present application reads, does not imply that the operator has no outside influence on the "automatic repositioning" of the internal medical device, rather the operator is receiving feedback from the system in the form of an audio, text, or video message to facilitate the repositioning of an invasive object within the subject. The art of record performs the same function by providing video feedback to the operator for facilitating the repositioning of an invasive object. Even if this were true Examiner asserts that the claims as written do not overcome the art of record in regard to repositioning the medical device within a region of interest, due to the fact that it is not specifically mentioned that the system must fully reposition the invasive device itself within the patient with no operator interaction or influence.

Regarding the argument that Dumoulin '635 does not disclose a predetermined response such as terminating therapy, repositioning the device without moving the subject, or activating an audio or text feedback, the Examiner also disagrees. Dumoulin '635 discloses the use of a video feedback system for conveying feedback to the operator about the location of the invasive medical device. A video feedback display will provide a functional equivalence to a text or audio feedback system that is providing feedback about the position of an invasive device's position.

In view of the remarks set forth above, the rejection is upheld.